



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

September 2, 2021

County Executive Frank White
Jackson County Courthouse
415 E. 12th Street
Kansas City, Missouri 64106
c/o Bryan Covinsky, bcovinsky@jacksongov.org

Dear Executive White:

On August 30, 2021, the County Legislature of Jackson County passed a resolution extending the August 6, 2021 mask mandate upon persons within Jackson County, Missouri. *See* Resolution No. 20749. Section 4(a) of the August 6, 2021 order states in pertinent part the following:

Section 4(a) "Exceptions to the face covering or mask requirement include the following: ...

Persons who have *disabilities* where face coverings or masks constitute *a substantial impairment to their health and well-being* based upon medical, behavioral, or *legal direction*;"

(Emphases added). The order does not define the terms "disability," "substantial impairment to their health and well-being," or "legal direction." Missouri law provides meaningful guidance in this regard.

First, under Missouri's Dictionary Act, the term "disability" includes minors, *i.e.*, "persons within the age of minority." § 1.020, RSMo. Section 1.020 provides the default meaning for words and phrases used in statutes, ordinances, and orders throughout the State. *See id.* Section 1.020(19) provides that persons under "legal disability" include "persons within the age of minority or of unsound mind or imprisoned." § 1.020(19), RSMo. The subsequent reference to "legal direction" later in the same sentence of the order, moreover, directly confirms that *legal* disabilities are included within the reference to "disabilities," as § 1.020(19) requires. Thus, based

on ordinary principles of interpretation, the exception for persons under disability in Section 4(a) of the August 6, 2021 order extends to minors, *i.e.*, persons under the age of eighteen.¹

Second, in the absence of a statutory or order definition, the phrase “substantial impairment to their health and well-being” in Section 4(a) must be construed according to its ordinary and natural meaning, as found in the dictionary. *See, e.g., Mantia v. Mo. Dep’t of Transportation*, 529 S.W.3d 804, 809 (Mo. banc 2017). “Substantial” means “considerable in amount, value, or worth.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2280 (2002). “Impair” means “to make worse: diminish in quantity, value, excellence, or strength: do harm to: damage, lessen.” *Id.* at 1131. “Health” means “flourishing condition: *well-being*, vitality, prosperity.” *Id.* at 1043 (emphasis added). And “well-being” means “a condition characterized by happiness, health, or prosperity: moral or physical welfare.” *Id.* at 2595. Thus, based on the plain and ordinary meaning of the order, any person under disability—including any minor under the age of eighteen—who experiences any significant diminishment of their happiness, health, or mental or physical welfare, as a result of mask-wearing, has suffered “a substantial impairment to their health and well-being” within the meaning of Section 4(a) of the order.

There is abundant evidence that many—even most—minors experience just such impairments to their well-being from mask-wearing over long periods, such as during school hours. *See, e.g.,* WORLD HEALTH ORG., ADVICE ON THE USE OF MASKS FOR CHILDREN IN THE COMMUNITY IN THE CONTEXT OF COVID-19, at 2 (2020); Silke Schwarz et al., *Coronakinderstudien co-Ki: Erste Ergebnisse Eines Deutschlandweiten Registers zur Mund-Nasen-Bedeckung (Maske) bei Kindern*, 169 MONATSSCHRIFT KINDERHEILKUNDE 353, 355 (2021); Jonas F. Ludvigsson, Opinion, *Little Evidence for Facemask Use in Children Against COVID-19*, 110 ACTA PAEDIATRICA 745, 745 (2021). For example, the Schwarz study cited above surveyed parents of 25,930 schoolchildren, who wore masks at school for average 270 minutes (4 hours and 30 minutes) per day. Schwarz et al., at 3. “Of the respondents 68% reported that children complained about *impairments* caused by wearing the masks.” *Id.* (emphasis added). These “impairments” included “irritability (60%), headache (53%), difficulty concentrating (50%), less happiness (49%), reluctance to go to school/kindergarten (44%), malaise (42%), impaired learning (38%), and drowsiness/fatigue (37%).” *Id.* Any or all of such impairments identified in this study—or any similar adverse impacts on a minor’s happiness, health, or mental or physical welfare—constitute “a substantial impairment to the health and well-being” of a minor within the plain and ordinary meaning of Section 4(a) of the August 6, 2021 order.

Third, the order does not define “legal direction,” so once again, the phrase must be interpreted in accord with its plain meaning found in the dictionary. *Mantia*, 529 S.W.3d at 809. “Legal” means “of or relating to law,” WEBSTER’S THIRD, at 1290, and “direction” means “guidance or supervision of an action, conduct, or operation,” *id.* at 640. “Legal direction,” therefore, includes guidance relating to the meaning and application of the law. *Id.* The order

¹ The analysis of “disability” in this letter excludes any reference to “disability” as defined in Chapter 213, RSMo, or any statute outside the scope of this legal direction.

does not specify *who* is to provide Jackson County residents with such “guidance” “of or relating to [the] law,” *id.*, but once again, Missouri law provides a clear and helpful answer. The Attorney General of Missouri is the chief legal officer of the State of Missouri. He is authorized to “institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary; and he may also appear and interplead, answer or defend, in any proceeding or tribunal in which the state’s interests are involved.” § 27.060, RSMo. The Attorney General “speaks for the State of Missouri” on legal questions, and “[i]n his role as attorney for the State, the attorney general represents the State of Missouri and its citizens....” *State ex rel. Nixon v. Am. Tobacco Co.*, 34 S.W.3d 122, 135 (Mo. banc 2000). When it comes to providing legal direction on matters of public import, “[t]he State of Missouri and its citizens are the attorney general’s clients....” *Id.* “If public justice and individual rights were likely to suffer” for want of such legal direction, “the courts would struggle hard to find authority for the attorney general to intervene in the name of the people.” *Id.* (quoting *State ex rel. McKittrick v. Mo. Pub. Serv. Comm’n*, 175 S.W.2d 857, 864-65 (Mo. banc 1943)). Thus, the State’s elected Attorney General is qualified to provide “legal direction” to residents of Jackson County about the meaning and application of this order.

For the reasons set forth above, as Missouri’s elected Attorney General, I hereby provide legal direction to all residents and visitors to Jackson County subject to the August 6, 2021 order. I direct that any resident or visitor subject to any physical or legal disability—including any minor under the age of 18—is exempt from the mask-wearing mandate under 4(a) of the order, provided that he or she (or a parent or guardian, in the case of minors) believes that wearing a mask or face covering will have any significant adverse impact on their personal, mental, or physical welfare. It is also the legal direction of my office that face coverings or masks constitute “a substantial impairment to ... health and well-being” for minors, especially for young children, as medical studies have concluded. As a result, all children under 18 and all adults with a disability so defined above qualify for the exemption contained in the August 6, 2021 order, Section 4(a). To that end, in keeping with my statutory authority, I also provide this “legal direction” to you in your capacity as County Executive of a political subdivision of the State of Missouri.

Enclosed is a summary of this legal direction that you may post at your office.

Very truly yours,



Eric S. Schmitt

Attorney General of Missouri